

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

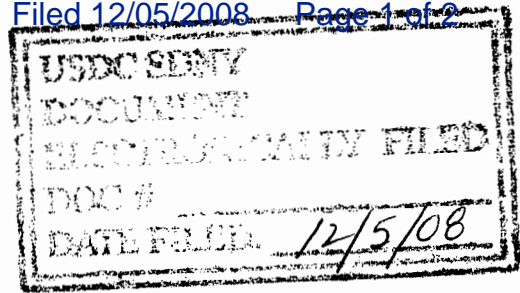
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MOISES MENDEZ,

Plaintiff,

-against-

STARWOOD HOTELS & RESORTS
WORLDWIDE, INC.

Defendant.
-----X



ORDER

08 Civ. 4967 (CM)(KNF)

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

The plaintiff moves to compel the defendant to produce all documents and video footage contemplated by the parties' discovery agreements, and, in the event that such discovery material has been destroyed, that the defendant provide a certification detailing the circumstances leading to such destruction. In addition, the plaintiff requests permission to continue the depositions of Nancy Kiska ("Kiska") and Antonio Rotolo ("Rotolo"), to allow the plaintiff to inquire of these witnesses with the benefit of requested discovery material. The plaintiff also informs the Court that he appears to have received privileged documents from the defendant, and requests that the Court "confirm" that the defendant has waived its privilege as to these documents. Having considered the parties' respective written submissions in support of, and in opposition to, this motion,

IT IS HEREBY ORDERED, that the plaintiff's motion to compel production of all documents and video footage encompassed by the parties' discovery agreements is granted. In the event that relevant and responsive discoverable material has been destroyed or is otherwise unavailable, the defendant must provide a certification describing the circumstances which occasion the absence or lack of availability of the material. The plaintiff's request, that the Kiska

deposition be resumed, is granted. The plaintiff's request, that the Rotolo deposition be continued, is denied, without prejudice, as it is not evident, on the present record, that the documents provided to the plaintiff after Rotolo's deposition necessitate that the deposition be resumed. It is further ordered that the plaintiff's request, that the Court deem the defendant's claim(s) of privilege waived, is denied. See S.D.N.Y. Local Rule 26.2. On or before December 12, 2008, the defendant shall prepare an appropriate privilege log, and serve it on the plaintiff.

Dated: New York, New York
December 5, 2008

SO ORDERED:



KEVIN NATHANIEL FOX
United States Magistrate Judge